

Approved as Submitted: March 21, 2007

**CITY OF MORGAN HILL
CITY COUNCIL SPECIAL MEETING AND
REDEVELOPMENT AGENCY SPECIAL MEETING
MINUTES – MARCH 7, 2007**

CALL TO ORDER

Mayor Pro Tempore/Vice-Chairman Carr called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, Lee, Sellers
Absent: Mayor/Chairman Tate (absent for agenda item 1 only)

Note: Mayor/Chairman Tate participated in the discussion/action of Agenda Item 2 via conference call from 6825 E. 4th Street, Scottsdale, Arizona

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Mayor Pro Tempore/Vice-chair Carr opened the floor to public comment for items not listed on the agenda. No comments were offered.

City Council and Redevelopment Agency Action

ADOPTION OF AGENDA

Agenda was adopted as printed.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Agency Member Sellers and seconded by Agency Member Grzan, the Redevelopment Agency Board, on a 4-0 vote with Chairman Tate absent, **Approved** Consent Calendar Item 1 as follows:

1. APPLICATION TO CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR WORKFORCE HOUSING REWARD PROGRAM FOR MADRONE PLAZA HOUSING PROJECT

Action: 1) Adopted Resolution No. MHRA-268; Authorizing the Executive Director to Submit an Application and Grant Documents to the California Department of Housing and Community Development for the Workforce Housing Reward Program for Madrone Plaza in the Amount of \$125,000; Subject to Review and Approval by Agency Counsel; and 2) If Awarded, Authorized Executive Director to do Everything Necessary and Appropriate to Execute the Standard Agreement (Standard Agreement will be Provided by State at Later Date) with CalHFA for the Workforce Housing Reward Program.

Note: The City Council deferred action on agenda item 2 as listed on the March 7, 2007 Special meeting agenda at 7:10 p.m. until the conclusion of the March 7, 2007 Regular City Council/Redevelopment Agency meeting.

Note: Mayor Tate joined the Council at 7:25 p.m. at which time agenda item 2 was considered.

DECLARATION OF POSTING OF AGENDA

Mayor/Chair Tate declared that he posted the agenda in accordance with Government Code 54954.2.

PUBLIC COMMENT

Mayor/Chairman Tate indicated that no one, other than he, was in attendance in Arizona. Therefore, no public comments were offered.

City Council Action

OTHER BUSINESS:

2. CONSIDERATION OF MEDICAL MARIJUANA DISPENSARY MORATORIUM

City Manager Tewes informed the Council that staff is recommending that it consider an urgency ordinance that would establish a moratorium on any city permits that would lead to the operation of medical marijuana dispensaries. He indicated that the adoption of an urgency ordinance would require a 4/5 vote of the City Council. He indicated that during the past couple of weeks, the City has received several inquiries, over the phone to Planning staff, regarding City regulations that may apply to a business being proposed that would allow the sale of medical marijuana. Staff has informed individuals making these inquiries that there are no specific regulations in the Morgan Hill zoning codes that are applicable to said use. He indicated that subsequent to the last meeting of the City Council, the City received another inquiry, and that it appears that there are now at least two separate businesses interested in learning about opportunities in Morgan Hill. He stated that the second individual is looking around town, talking to landlords to see if a business could be established. Staff brings this issue to the Council this evening because absence a moratorium, it could be argued that the City would be in a position where any permit sought would be administrative; and not subject to the City's discretionary

review/action. Should a business submit a business application, it may result in a business being established only to find out at a later date that the Council missed the opportunity to establish specific regulations/rules for such businesses. He stated that staff felt it important to bring this matter to the Council's attention as soon as possible in light of the inquiries that have been made. He noted that this past year, a number of cities have been dealing with this issue because the U.S. Supreme Court has now made it clear that it is their view that growing, distributing and personal possession of marijuana is unconstitutional. He stated that this poses a challenge/conflict with California laws.

City Attorney Kern clarified that the intent this evening was not to explain all of the legal difficulties associated with this issue. She stated that many cities are facing conflicting lawsuits and placing police departments in a position of enforcing California State law while the federal drug enforcement agency may decide to come in and make an example; trying to shut down an operation. She said that this is a very difficult issue that has yet to be resolved. While the U.S. Supreme Court made its ruling, they did not decide on the issue of whether Federal action(s) preempt State action(s). She said that this remains an unknown and will be litigated. She noted that the Council's packet includes evidence from the City's Chief of Police as well as from other cities about concerns to public health and safety associated with a medical marijuana dispensing business operating without any regulations or consideration. She stated that California Government code allows the Council, on a 4/5 vote, to institute a 45-day moratorium without requiring a 10-day notice. She clarified that this is not an action of whether the Council is approving, prohibiting, and/or regulating marijuana dispensaries, but rather an action that gives the City the opportunity for staff to conduct the homework/research required. Staff would return to the Council with information relating to the various ramifications. She stated that after the 45-day period, the moratorium would go away, and the City would be back to the same situation it is at this time. Should the Council decide it wishes to extend the moratorium period to allow for additional staff work to be completed, the moratorium could be extended for up to two-years. However, any extension would have to be done with the full 10-day notice/public hearing process. Therefore, the recommended action before the Council is to implement a 45-day moratorium.

City Manager Tewes said that in his years with the City of Morgan Hill, there have been no inquiries from those who might wish to take advantage of such services, or the demand for such services. He stated that the need for medical marijuana is being met, somehow, without having a dispensary facility in Morgan Hill.

Council Member Sellers inquired as to what latitude the Council may have in taking next steps (e.g., referring this matter to a committee), should the Council decide it wishes to implement a moratorium.

City Attorney Kern said that the action the Council could take this evening is to adopt an urgency ordinance that would implement a 45-day moratorium. She clarified that the intent of the moratorium is to allow time for study(ies) to be conducted, and to allow staff to return/report back to the full Council. Should the Council choose to establish a special ad hoc committee, the matter would return to the Council after staff has had the opportunity to conduct some work. As an alternative, the Council could refer the matter to one of its committees. She felt that such an action would be appropriate; however, actions would need to be taken within the 45-day period.

Mayor Pro Tempore Carr opened the floor to public comment.

Mark Hendrichsen informed the Council that he is seeking a business license to open a medical cannabis (marijuana) dispensary facility in Morgan Hill. He said that there are several seriously ill individuals in Santa Clara County and in the City of Morgan Hill who have to leave the area; heading north to San Francisco, Berkeley, Hayward, Alameda County, San Mateo, or south to Santa Cruz in order to obtain medicine. Individuals with serious illnesses or cancer do not have a facility close by to take care of their needs. He was looking to establish a business to assist these individuals with their needs in order to avoid traveling over treacherous roads to meet their medical needs. He indicated that there are over 400 dispensaries in California that are doing well. He acknowledged that 30 dispensaries were shut down last year with 18 shutting down on their own. He indicated that a lot of the proceeds from the business would be put back into the City/community. He committed to donating money to the children's burn center, children's cancer center, any children's organization, and/or any city organization in need of financial assistance. He said that there are approximately 5,000 individuals/patients in the South County area seeking medicine. He stated that his business would only dispense cannabis to cancer/ill patients in dire need who use it on a daily basis. He would like to go to the hospitals and seek a small group of individuals in need of medicine so that they do not have to travel 80 miles to San Francisco or 60 miles back and forth to Santa Cruz to obtain their medicine. He did not believe the use would hurt the community, and is a good thing to have in a community.

Mike Green inquired whether the City has the law enforcement capabilities and budget in place to handle the issues that would come about with a marijuana dispensary business. He noted that there has not been a request for such a use, and that he did not support the use in Morgan Hill. He requested the ability to review a bike trail map in order to review the proposed route.

No further comments were offered.

Council Member Sellers said that the Council needs to keep focus on the issue at hand this evening: deciding whether to implement a 45-day moratorium. It was his inclination to refer this matter to the Public Safety & Community Services Committee. He noted that the Police Department has documented significant concerns that they have based on their research and the experience from other communities. He did not believe the City could ignore the significant impacts. Should there be an opportunity to allow the use in Morgan Hill, he felt that it needs to be under the strictest circumstances. It was his belief the Public Safety & Community Services Committee would get into the details of the issue and explore whether the use makes sense in Morgan Hill. If found to be appropriate, the City needs to determine under what circumstances the use makes sense.

Action: *Council Member Sellers made a motion, seconded by Council Member Lee, to **Adopt** the moratorium allowing staff 45-days to review some of the items identified; returning to the Council with additional information.*

Mayor Tate indicated that he heard all comments, and that he read the staff report in detail. He felt that there were more questions than answers at this time, and that the Council needs to obtain the answers. He stated his support of the motion.

Mayor Pro Tempore Carr inquired whether the Council believes there is a need to refer this item to a committee at this time; particularly the Public Safety & Community Services Committee. He noted that this Committee has been tasked with a significant amount of work. He said that the next 45-days will be extremely busy for this Committee with the public safety goal it is addressing. He stated that he would support having the item reviewed at a staff level. When the item returns in 45-days, and it is felt that a Committee needs to look at the issue further, he felt that this would be the time to make the assignment.

Council Member Sellers stated that he would support referring the matter to staff, and requested that the Public Safety & Community Services Committee give thought to whether it needs to be referred to a Council committee or remain at the Council level.

Mayor Pro Tempore Carr acknowledged that this is a complex question. He did not believe this was a use the Council would be addressing this year when it thought about its year of work. He acknowledged that there are several questions that need to be answered. He requested that staff evaluate the compatibility issue associated with State versus Federal laws and what this means to a local entity. What impact/position would this place the City's law enforcement? He wanted to learn more about compatible land uses (e.g., Where may this use be allowed and under what circumstances? What might be viewed as compatible uses?). He requested that the Police Department give thought to impacts on public safety. He noted that one of the items the Public Safety & Community Services Committee has been talking about is the impacts associated with different businesses and residential developments coming into the city. He felt that more thought needs to be given to this directly. He felt that this was an issue where the City needs to give thought to what impacts there would be to the already strained public safety department. He inquired whether staff can assess a regional need versus a local need as this would be useful information. If in fact there is someone under a doctor's care that needs a prescription for medical marijuana, could it be associated with a hospital under a doctor's care? How is this deemed appropriate? He was sure that there were other questions, but these are a few questions that come to mind.

Vote: *The motion carried unanimously (5-0).*

Action: *Council Member Sellers made a motion, seconded by Council Member Grzan, to Adopt Urgency Interim Ordinance No. 1820, New Series: **AN INTERIM ORDINANCE PROHIBITING THE ISSUANCE OF PERMITS, ENTITLEMENTS, LICENSES, AND APPROVALS OF MEDICAL MARIJUANA DISPENSARIES PENDING THE STUDY, CONSIDERATION, AND POSSIBLE ENACTMENT OF APPROPRIATE AMENDMENTS TO THE MORGAN HILL MUNICIPAL CODE** by the following roll call vote: AYES: Carr, Grzan, Lee, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor Pro Tempore/Vice-Chair Carr adjourned the special meeting at 7:48 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY